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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 984

JAMES RAY LOVE,
Petitioner.

vs.

JOHN TAYLOR, ROSALIE TAYLOR, WILLIE MAE SUGGS, VIRGIL SUGGS, and EMMA GRIFFIN,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The Respondent substantially agrees with the statements of the Petitioner regarding the Opinions below; Jurisdiction; Questions Presented, in substance only; Statutes; Federal Rules, and Regulations Involved; and the Statement.

STATEMENT OF CASE

The Plaintiff herein was involved in an automobile accident near Tazell, Tennessee, on or about December 31, 1966, with the Defendant herein James Ray Love. The Plaintiff subsequently filed suit in the U.S. District Court for the Eastern District of Michigan in 1968, and the Defendant was served with a copy of the Summons and Complaint in Tennessee.

As his original answer to the Complaint the Defendant moved the Court to quash service and dismiss. The Motion to Quash Service was granted on July 19, 1968, by Judge Stephen Roth, but the Defendant's Motion to Dismiss was denied, and the Counter-Motion by the Plaintiffs for change of venue was granted. In ordering the transfer the Trial Court relied on *Goldlawr, Inc. v. Heiman,* 369 U.S. 463, 8 L. Ed. 39, 82 S. Ct. 913 (1962) and *Mayo Clinic v. Kaiser,* 383 Fed 2nd 653, CA 8 (1967).

The Defendant appealed the Order transferring venue entered by Judge Roth, through the U.S. Court of Appeals Sixth Circuit. The Court of Appeals, relying on *Goldlawr,* and the mandate under 28 U.S.C. 1406 (a) affirmed the Order entered by Judge Roth.

The Defendant now seeks Certiorari to the United States Supreme Court.

ARGUMENT

The decision below should not be reviewed. The District Court and the Circuit Court of Appeals have rightly concluded that the interpretation of 28 USC §1404 (a) and 1406 (a) in *Goldlawr, Inc. v. Heiman,* 369 U.S. 463, 8 L. Ed. 39, 82 S.Ct. 913 (1962) is controlling in the instant case. The Sixth Circuit is in agreement with two other Circuit Courts of Appeals and has presented a reasoned, well thought decision in the instant case.

Since the *Goldlawr* decision the effect has not been to subject a Defendant to nationwide access by a Plaintiff. 28 USC 1406 (a) specifically bestows upon the District Court Judge the discretion to dismiss an action or to transfer the case to a district where venue is proper, when the interest of justice demands such transfer.

The Petitioner has envisioned a system that would allow commencement of an action in any federal jurisdiction, and subject a Defendant to nationwide access. The system the Petitioner envisions does not demonstrate an awareness of the wide discretion given the District Judge. The statute 28 USC 1406 (a) requires dismissal, with transfer allowed only in that very limited number of cases where judicial discretion sees transfer as being the interest of justice. In the instant case dismissal would have deprived the Plaintiffs of their right to an adjudication on the merits, a fundamental consideration, which District Judge Roth considered be in the interest of justice to allow. *Goldlawr* has not reformed the federal judiciary to allow nationwide access to a Defendant. The control, which is expressly awarded in 28 USC 1406 (a), is the discretion of the trial judge. It is this control which checks the system

and prevents nationwide access to a Defendant, by calling for dismissal except in those cases where dismissal will work an undue hardship on the Plaintiff.

The Petitioner does not allege facts which establish an abuse of the trial judge's discretion in allowing the transfer, nor does he meet the fact of the desirability of trial on the merits. The very technical flaw of venue, rather, is the basis for avoiding a trial on the merits.

The question of interpretation of 28 USC 1406 (a) has been reviewed by this Honorable Court in *Goldlawr* and has written an opinion which deals specifically with the instant case. The transfer by the District Court was in the interests of justice and accomplished through the mandate of 28 USC 1406 (a) as interpreted by *Goldlawr*.

CONCLUSION

The questions presented by the Petition, above named, have been amply answered by the controlling decision of *Goldlawr*, therefore, it is respectfully requested that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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